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No. 561

In the Supreme Court of the United States

OCTOBER TERM, 1964

STATE OF LOUISIANA,

Respondent,

v.

DUDLEY DUPLESHIN,

Relator.

Application for a Writ of Certiorari and Review, Directed to the Honorable Leo W. McCune, Judge of the Juvenile Court for the Parish of Jefferson, and the Supreme Court of the State of Louisiana

ORIGINAL BRIEF ON BEHALF OF STATE OF LOUISIANA, RESPONDENT

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OPINION OF LOWER COURTS

The opinion of the Supreme Court of the State of Louisiana is reported at:

246 La. 595 (official) and at
165 So. 2d 485 (unofficial)

BASIS OF JURISDICTION

Relator is before this Court on an application for a writ of certiorari and review based on the grounds that his rights have been violated as guaranteed to him by the 14th amendment of the Constitution of the United States because the Supreme Court of the

State of Louisiana denied his application for a writ of certiorari and review and a rehearing from a denial of a review is not permissible.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the following provision of the Constitution of the United States:

(1) "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; now deny to any person within its jurisdiction the equal protection of the laws." United States Constitution, Amendment XIV, S1.

This case involves the following provision of the Constitution of the State of Louisiana:

(1) "In all criminal prosecutions the accused shall have the right to a speedy, public and impartial trial in accordance with the provisions of this constitution. All trials shall take place in the parish in which the offense was committed, unless the venue be changed; except that the Legislature may provide for the venue and prosecution of offenses when one of the acts constituting an offense or an element of the offense occurs in a parish of this state and other acts or elements thereof occur out of the parish or state, or when an

offense is committed in this state but the exact place of the commission of the offense in this state cannot be established. The Legislature may provide for the venue and prosecution of offenses committed within 100 feet of the boundary line of a parish. The accused in every instance shall have the right to be confronted with the witnesses against him; he shall have the right to defend himself, to have the assistance of counsel, and to have compulsory process for obtaining witnesses in his favor. Prosecution shall be by indictment or information; but the Legislature may provide for the prosecution of misdemeanors on affidavits; provided, that no person shall be held to answer for capital crime, unless on a presentment or indictment by a grand jury, except in cases arising in the militia when in actual service in time of war or public danger. No person shall be twice put in jeopardy of life or liberty for the same offense, except in his own application for a new trial, or where there is a mistrial, or a motion in arrest of judgment is sustained." Louisiana Constitution, Article I, S 9.

ISSUES PRESENTED FOR REVIEW

The relator urges that he was convicted by the trial judge where there was no evidence whatsoever pointing to his guilt and secondly that it was error to fail to furnish him a recording and transcription of the entire proceedings on which he was convicted.

STATEMENT OF THE CASE

Dudley Dupleshin was tried under a bill of information filed in the Juvenile Court for the Parish of Jefferson, State of Louisiana for the crime of "Indecent Behavior with Juveniles", Louisiana Revised Statutes 14:81, which crime is a misdemeanor.

On July 18, 1963, about 4:00 P.M., Debra Guggenheimer, four (4) years old, was at the home of Dupleshin playing with Dupleshin's dogs and while at his home, Dupleshin took Debra into the bedroom and placed his finger into her vagina and rectum.

It is a fact that the Court would not permit Debra to testify as he felt that she was incompetent, she being only 4 years of age. However, the State did place on the stand the mother of Debra, who testified as to the date of birth of the child on direct examination. When counsel for the State attempted to have Debra's mother testify on direct examination as to the conversation between herself and Debra, the trial Court sustained the objection of counsel for Dupleshin and did not at that time permit Debra's mother to testify further. Counsel for Dupleshin then placed Debra's mother on cross examination and questioned her at length with reference to the time that Debra had spoken to her on July 18, 1963. When he had completed his cross examination, counsel for the State on redirect examination then went into the matter of the conversation between Debra and her mother, which the Court permitted at this time since Counsel for Dupleshin brought it out on cross examination. Debra's

mother testified that Debra told her that Mr. Dudley had put his finger in her "booty", which she explained was what she had taught Debra to call her rectum and also had put his finger in her "du du", which she explained was what she had taught Debra to call her vagina. Mrs. Guggenheimer also testified that Debra was red around her vagina and rectum. This conversation between Debra and her mother took place at approximately 6:00 P.M. on the same date of the occurrence of the crime. Counsel for Dupleshin did object to this testimony, but the Court overruled his objection stating that the question of the conversation between Debra and her mother was brought out in cross examination by Counsel for Dupleshin and the State had a right on redirect examination to now go into the conversation. No bill of exception was reserved to the ruling of the Court nor was any bill whatsoever perfected.

The Court found Dupleshin guilty of the crime charged and ultimately sentenced him to serve a term of six (6) months in the Parish Prison.

Writs were denied by the Supreme Court of the State of Louisiana.

ARGUMENT

May It Please The Court:

Since no bills of exceptions were reserved and perfected by Counsel for Dupleshin throughout the trial, nor was there any error patent on the fact of the record pointed out to the Supreme Court of the

State of Louisiana, there was nothing for them to review. *State v. Bennett* 235, La. 987, 196 So. 2d 443.

The Procedure for reserving bills of exceptions is set forth in Louisiana Revised Statutes 15:499 which provides:

> "On the trial of all Criminal cases, whenever a bill of exceptions shall be reserved to the ruling of any objection, the Court shall at the time and without delay order the Clerk of Court or stenographer to take down the facts upon which the objection and the ruling are based, together with the objection, the ruling and the reasons of the ruling, which statement, objection, ruling and reasons, so taken down, shall be preserved among the records of the trial, and shall, when signed, by the judge, constitute the bill of exceptions; provided that whenever a bill has been reserved the judge may be coerced by mandamas to sign the same."

Louisiana Revised Statutes 15:500 provides:

> "The bill of exceptions must show the circumstances under which and the evidence upon which the ruling complained of is based; and the accused is without right to have taken down any evidence except that which is necessary as a basis for his bill; he cannot require that any evidence be taken down that pertains to guilt or innocence."

The purpose of these two sections is to provide a record for the Court in the event of an appeal. As stated before, no bills of exceptions were reserved or perfected by Counsel for Dupleshin.

Louisiana Revised Statutes 14:502 provides:

"No error, not patent on the face of the record, can be availed of after verdict, unless objection shall have been made at the time of the happening of such error and unless at the time of the ruling on the objection a bill of exceptions shall have been reserved to such adverse ruling."

There is nothing in the record to show that Dupleshin was an indigent person nor that any request was made by him requesting a stenographer to record the entire proceeding. Counsel for Dupleshin was not an attorney appointed by the Court to represent him.

There was no denial of due process of law to Dupleshin for failing to furnish him a recording and transcription of the entire proceedings. The State of Louisiana provides the method whereby a defendant can make up his record and it is set forth hereinabove in the Statutes quoted.

There was evidence adduced in the trial court sufficient to sustain the conviction of Dupleshin, that being the testimony Mrs. Guggenheimer relative to the acts committed on her daughter by Dupleshin and the redness of the areas mentioned.

CONCLUSION

For the reasons stated above, the defendant had a legal trial and all of the rights guaranteed to him under the laws of the State of Louisiana and of the United States and their respective constitutions were

properly safeguarded. The application for a writ of certiorari and review should be denied.

Respectfully submitted,

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CERTIFICATE

I, Michael E. Culligan, a member of the Bar of the United States Supreme Court, hereby certify that this _____ day of February, 1965 a copy of the above and foregoing brief was served on H. Alva Brumfield and Garland R. Rolling, 319 Metairie Road, Metairie, Louisiana, by depositing same in the United States Mail, postage prepaid.

_____

Of Counsel

B-129, 2-65